

**ORDINANCE NO. 09-57**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 42 ENTITLED "FLOODS AND WATER MANAGEMENT" OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, FLORIDA AND IN PARTICULAR, REVISING ARTICLE II. FLOOD DAMAGE PREVENTION, DIVISION 1. GENERALLY, DIVISION 2. VARIANCES AND DIVISION 3. STANDARDS, TO PROVIDE NEW OR REVISED DEFINITIONS AND TERMINOLOGY, TO CLARIFY LANGUAGE REGARDING DEVELOPMENT STANDARDS IN SPECIAL FLOOD HAZARD AREAS OR OTHER AREAS; AND TO ADOPT AND ENFORCE NEW FEMA FLOOD INSURANCE RATE MAPS THAT BECOME EFFECTIVE ON SEPTEMBER 11, 2009; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Federal Emergency Management Agency (FEMA) intends to issue new Flood Insurance Rate Maps, effective September 11, 2009; and

**WHEREAS**, this ordinance is intended in general to benefit the health, safety and public welfare of the City and its residents; and

**WHEREAS**, the specific purpose and intent of this ordinance is to adopt and enforce the new FEMA Flood Insurance Rate Maps by reference and to revise definitions, terminology and development standards in language that meets FEMA standards.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Chapter 42 entitled "Floods and Water Management", Article II. Flood Damage Prevention, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by revising Division 1. Generally, Division 2. Variances and Division 3. Standards, to read as follows:

Chapter 42

**FLOODS AND WATER MANAGEMENT**

\* \* \*

**ARTICLE II. FLOOD DAMAGE PREVENTION**

**DIVISION 1. GENERALLY**

**Sec. 42-26. Definitions.**

In constructing the sections of this article, where the context will permit and no definition is provided in this section, the definitions provided in F.S. ch. 403 and in the rules and regulations promulgated thereunder, as may be amended from time to time, shall apply. The following words, terms and phrases, when used in this article, shall have the same meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

*Critical facility* means a hospital, police station, fire station, storage facility of critical records, emergency operations center or similar facility that is needed for flood response activities before, during and after a flood. All critical facilities built after September 11, 2009 shall be flood protected from damage and loss of access as a result or from the 500-year flood or the flood of record, whichever is greater.

\* \* \*

*New construction* means a structure for which the start of new construction commenced on or after ~~the effective date of the first floodplain management regulation adopted by the county (June 18, 1974)~~ September 29, 1972. The term includes any subsequent improvement to the structure.

*Substantial improvement* means any combination of reconstruction, rehabilitation, addition, or other improvements of to a structure building, taking place during a two-year period, in which the cumulative cost

~~equals or exceeds 50 percent of the market value of the building. The market value of the building shall be one of the following: (1) the appraised value, as determined by a state-certified appraiser, of the building prior to the start of the initial repair or improvement; (2) the assessed value of the building prior to the start of the initial repair or improvement; or (3) in the case of damage, the value of the building prior to the damage occurring. the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement.~~ The term includes structures which have incurred substantial damage regardless of the actual repair work performed. ~~The market value of the structure shall be the appraised value of the structure prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring.~~ Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the ~~structure building.~~ ~~Records of cumulative building improvements as identified in the applications for building permits shall be maintained by the city for a period of ten years commencing on January 20, 1983.~~ The term does not include either:

- (1) Any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are solely necessary to ensure safe living conditions; or
- (2) Any alteration of an historical structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

\* \* \*

**Sec. 42-28. Application of article.**

- (a) This article shall apply to and shall be enforced in the city.
- (b) Those maps referred to in section 42-26, as amended effective November 4, 1987, and as amended

effective January 20, 1992, and as amended effective September 11, 2009, together with the flood insurance study therein, and any revisions thereto are adopted by reference and are declared to be a part of this article and shall be kept on file, available to the public, in the offices of the municipal official.

(c) This article shall constitute minimum standards throughout the city.

\* \* \*

**Sec. 42-31. Effect on ordinances, building code and other regulations.**

This article shall supersede any conflicting county ordinance, building code, or any other regulation to the extent that this article imposes more stringent requirements for the use or development of any lands or structures within special flood hazard ~~or CHH~~ areas in the city. It is not intended to repeal, modify, or change any such ordinance, building code or other regulation except as stated in this article.

\* \* \*

DIVISION 3. STANDARDS

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**Sec. 42-96. Development in special flood hazard area or area outside special flood hazard area.**

\* \* \*

(11) Review proposed development to ensure that:

~~a. No use shall be made for other than crop, grove, nursery and grazing purposes, or similar uses, and no building of any type shall be constructed, erected upon or moved to any land below the elevation established by the county flood criteria map, as adopted by the board of county commissioners, or the back of sidewalk elevation of the road fronting the property, or if there is no sidewalk, the elevation~~

~~of the crown of road or street, abutting such building site, whichever is higher.~~

~~b. For uses, other than residential requiring a floor, the floor elevation shall be a minimum of four inches above the elevation established by the county flood criteria map, or the back of sidewalk elevation or, if there is no sidewalk, the elevation of the highest crown of road or street abutting such building site, whichever is higher or, if the road has no crown, the highest edge of cross section of the road shall apply. For all residential uses, the floor elevation shall be a minimum of eight inches above the elevation established by the county flood criteria map or the back of sidewalk elevation or, if there is no sidewalk, the elevation of the highest crown of the road or street abutting such building site, whichever is higher, or, if the road has no crown, the highest edge of cross section of the road shall apply.~~

a. Residential construction. New construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including the basement, elevated no lower than eight inches above the base flood elevation, or no lower than eight inches above the crown of the road, or no lower than eight inches above the back of the sidewalk elevation of the road fronting the property, whichever is greater.

b. Non-residential construction. New construction or substantial improvement of any commercial, industrial, or non-residential building shall have the lowest floor, including the basement, elevation no lower than four inches above the base flood elevation, or no lower than four inches above the crown of the road, or no lower than four inches above the back of the sidewalk elevation of the road fronting the property, whichever is greater. Buildings located in all special flood hazard areas may be floodproofed in lieu of being elevated; provided, however, that all areas of the building below the required elevation are watertight with walls substantially impermeable to the passage of

water and with walls that also are constructed of structural components having the capability of resisting hydrostatic and hydrodynamic loads. A registered professional engineer or architect shall certify that the standards of this paragraph are satisfied.

\* \* \*

**Sec. 42-97. Standards for development within special flood hazard areas.**

(a) No new construction or substantial improvement of any residential structure or manufactured home shall be permitted in special flood hazard areas, and no development permit referred to in section 42-96 shall be issued therefor unless new construction or substantial improvement has the lowest floor, including the basement, elevated to or above the level of the regulatory flood (100-year flood). For all residential uses, ~~the floor elevation shall be a minimum of eight inches above the elevation established by the flood insurance rate map or the elevation of the highest crown of the road or street abutting such building site, whichever is higher, or, if the road has no crown, the highest edge of cross section of the road shall apply~~ the lowest floor, including the basement, shall be elevated no lower than eight inches above the base flood elevation, or no lower than eight inches above the crown of the road, or no lower than eight inches above the back of the sidewalk elevation of the road fronting the property, whichever is greater. Electrical, plumbing and other attendant utilities are prohibited below the base flood elevation.

(b) No new construction or substantial improvement of any nonresidential structure shall be permitted in special flood hazard areas, and no development permit referred to in section 42-96 shall be issued therefor unless new construction or substantial improvement has the lowest floor, including the basement, elevated to or above the level of the regulatory flood (100-year flood). For

~~all uses other than residential requiring a floor, the floor elevation shall be a minimum of four inches above the elevation established by the flood insurance rate map or the elevation of the highest crown of the road or street abutting such building site, whichever is higher, or, if the road has no crown, the highest edge of cross section of the road shall apply the lowest floor, including the basement, shall be elevated no lower than four inches above the base flood elevation, or no lower than four inches above the crown of the road, or no lower than four inches above the back of the sidewalk elevation of the road fronting the property, whichever is greater.~~

\* \* \*

**Section 2:    Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3:    Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation or suspension of licenses or permits.

**Section 4:    Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections

of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

**Section 5: Severability Clause.**

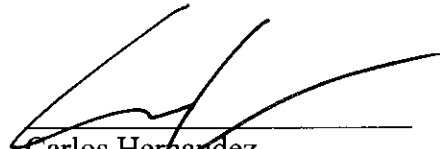
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6: Effective Date.**

This ordinance shall become effective when passed by the City Council and when signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED AND ADOPTED this 25th day of August, 2009.

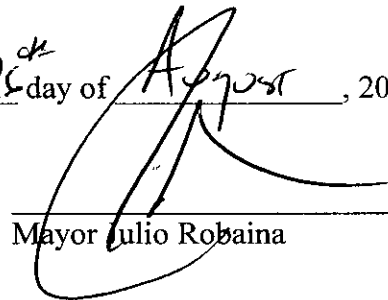
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
\_\_\_\_\_  
Carlos Hernandez  
Council President

Attest:

Approved on this 25<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.